

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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GERALD G. NELSON,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:19-cv-02839-JPM-tmp
v.	)	
	)	
DENIS MCDONOUGH, Secretary	)	
Department of Veterans Affairs,	)	
	)	
Defendant.	)	

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND ENFORCING  
SETTLEMENT AGREEMENT**

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Before the Court is Defendant Denis McDonough’s Motion to Enforce the Settlement Agreement, filed on May 13, 2021.<sup>1</sup> (ECF No. 23.) On May 14, 2021, the Court granted counsel for Plaintiff Gerald G. Nelson’s Motion to Withdraw (see ECF Nos. 24 & 25)<sup>2</sup>. On May 14, 2021, this Court referred Defendant’s Motion to Enforce the Settlement Agreement to the United States Magistrate Judge for determination pursuant to Administrative Order No. 2013-05. (ECF No. 27.) The Magistrate Judge then entered an Order to Show Cause, which ordered Plaintiff to “show cause why the court should not grant defendant’s motion . . . .” (ECF No. 28 at PageID 114.) The Magistrate Judge provided a deadline of June 11, 2021 for Plaintiff to respond. (Id.) Plaintiff failed to respond in a timely fashion, or request or an extension. On June 17, 2021, the Magistrate Judge entered a Report and Recommendation (“R&R”), which

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<sup>1</sup> Plaintiff named Robert L. Wilkie as the Defendant in his Complaint. Denis McDonough is the current Secretary of the Department of Veterans Affairs and asserts that he should be substituted as the proper Defendant in this case pursuant to Fed. R. Civ. P. 25(d). Because “[t]he officer’s successor is automatically substituted as a party[.]” Denis McDonough is hereby substituted as the proper Defendant in this case.

<sup>2</sup> Accordingly, Plaintiff is proceeding *pro se*.

recommended that “Defendant’s Motion to Enforce the Settlement Agreement be granted, that Defendant be ordered to pay Nelson the agreed-upon settlement amount, and that Nelson’s lawsuit be dismissed with prejudice in accordance with the settlement agreement.” (ECF No. 29 at PageID 116.)

Following entry of the Magistrate Judge’s R&R, and two weeks after deadline set by the Magistrate Judge, Plaintiff filed an affidavit stating that he felt coerced into signing the settlement agreement and “requesting consideration that this motion be accepted after the deadline of June 11, 2021 and that [he] received enough time to secure new counsel.” (ECF No. 30 at PageID 125.) Following the Plaintiff’s filing the affidavit, the Magistrate Judge entered an order giving Plaintiff thirty days to retain counsel and setting an evidentiary hearing for Friday, August 27, 2021. (ECF No. 33.) Plaintiff did not attend that evidentiary hearing. (See ECF No. 34.)

On September 10, 2021, the Magistrate Judge entered a second R&R which recommends that Defendant’s Motion be granted because Plaintiff’s claim of duress is not supported by the evidence in the record. (ECF No. 35 at PageID 146.) Plaintiff “states that he settled his claims only because he was told he would be deposed if the case continued.” (Id. at PageID 145.) As the Magistrate Judge held, though, “[d]epositions are a routine matter of civil litigation, and more extraordinary threats than depositions have been found to not meet the duress standard in Tennessee.” (Id.)

Plaintiff filed no objections to the second R&R prior to the deadline of September 24, 2021. Accordingly, no objections have been filed within the fourteen days of the Magistrate Judge’s R&R. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). The Court hereby **ADOPTS** the Magistrate Judge’s R&Rs in their entirety. Defendant’s Motion to Enforce the Settlement

Agreement is **GRANTED**. Specific performance of the executed settlement agreement (ECF No. 23-1) is hereby **ORDERED**. Additionally, Defendant “shall pay four thousand two hundred dollars and zero cents (\$4,200.00) compensating damages.” (Id. at PageID 96.) “The check will be made out to Plaintiff and Plaintiff’s counsel, Gerald Green.” (Id. at PageID 97.)

**SO ORDERED**, this 8th day of October, 2021.

/s/ Jon P. McCalla  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE